WASTE MANAGEMENT POLICY

ÿ PERMITTING ÿ PROGRAM DEVELOPMENT
ÿ RESOURCE ÿ FIELD OPERATIONS
RECOVERY ÿ ADMINISTRATION
☒ REGULATION
INTERPRETATION

SUBJECT: Empty Containers

POLICY NO.: VI.1.f. (AMENDMENT)

DATE: July 9, 1984

AUTHORITY: 401 KAR 31:010 Section 7

EMPTY CONTAINERS

401 KAR 31:010 Section 7: Residues from containers defined as empty which formerly held a hazardous waste.

Are residues and rinsate considered hazardous upon removal from an "empty" container? "Empty" is defined in the above state regulation as being a container in which most of the wastes have been removed by normal means and less than one inch of residues remain in the bottom Both conditions must exist in order to meet the definition.

The answers depend on the type of wastes:

(1) Wastes from non-specific sources listed in 401 KAR 31:040 Section2 and 40 CFR 261.31: NO. The mixture rule does not apply to any residues excluded from regulation by the empty container rule of 401 KAR 31:010 Section 7 (1)(a). (see "VII Container Cleaning Operations" in the November 25, 1980, Federal Register, pages 78528 and 78529, attached).

(2) Wastes from specific sources listed in 401 KAR 31:040 Section 3 and 40 CFR 261.32: NO. The mixture rule does not apply to any residues excluded from regulation by the empty container rule of 401KAR 31:010 Section 7(1)(a) (see "VII Container Cleaning Operations" in the November 25, 1980, Federal Register, pages 78528 and 78529, attached).

(3) Acutely hazardous wastes listed in 401 KAR 31:040 Section 4(5) and 40 CFR 261.33(e): YES U.S. EPA considers these wastes as too toxic to exempt.

(4) Discarded commercial chemicals listed in 401 KAR 31:040 Section 4(6) and 40 CFR 261.33(f): NO. As is (1) above, the mixture rule does not apply in this case (see "VII Container Cleaning Operations" in the November 25, 1980, Federal Register, pages 78528 and 78529, attached).

(5) Hazardous by Characteristic under 402 KAR 31:030 and 40 CFR 261 Subpart C: NO. But residue removed from an "empty" container should occasionally tested to see if it meets one of the characteristics in which case the residue might be hazardous and become regulated.

In the above cases where YES is the answer, the small quantity generator limits would also have to be exceeded for the wastes to be considered hazardous.

The following examples are provided for illustrations:

(a) A drum reconditioner receives partially full 55 gallon containers. The first employee on the lime pours out the remaining spent solvent F001 into a collection bin until less than one inch remains in the drum. The bin is sent to a reclaimer about once a month when 500 gallons are accumulated. The second employee washes the "empty" drum and the rinsate is discharged through a floor drain eventually connecting to a sanitary sewer.

(b) The contents originally poured out of the drum is hazardous because the waste is listed and more than one inch of waste was present. The small quantity limit of 2200 lbs. (260 gallons) is exceeded by the site, and the recycling exemption does not apply since the waste is listed.

(c) The rinsate is hazardous because the container does not meet the definition of empty and the site is a regular generator.

(d) At the same place, later the same day, the first employee does not pour out all of the liquid which could normally be removed by pouring. However, less than one inch of spent solvent remains.

(e) The rinsate is hazardous because both conditions of "empty" are not met, i.e. not all of the pourable contents were removed.

(f) Granted, it is impossible to "catch" a generator in the third case. However, generators should establish the necessary controls (log books, practices) and emphasize in employee hazardous waste training that all hazardous waste which is removable by "common industry practice" should be removed.

(g) A truck cleaning operation triple rinses a tanker which just carried dioxin. The 200 gallons of solvent are discharged to a surface impoundment.

(h) Since dioxin is acutely hazardous, the rinsate is hazardous by the mixture rule and the site needs a storage facility permit for the surface impoundment (since the small quantity limits of 1 kg is exceeded). The cleaned tanker is considered "empty".

(i) A tank car cleaning company receives partially full cars. At station #1, the remainder of the car is pumped out under pressure. Less than one inch remains at the deepest point At station #2, the remaining material is washed out of the tank. The waste is an F003 solvent.

(j) The rinsate is not hazardous. The material taken out at station #1 becomes a waste upon removal and is hazardous.

UNITED STATES ENVIRONMENTAL PROCTECTION ACENCY
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Mr. Tom Tiesler, Director
Division of Solid Waste Management
TN Department of Health & Environment
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150 9th Avenue, North Nashville, Tennessee 37203

Dear Tiesler:

At the State Hazardous Waste Directors' Meeting in Mobile the question was raised as to whether drum recycling facilities are regulated under RCRA. Although it is impossible to generalize each drum recycler in the region, we hope that the enclosed discussion will hopefully clear up this matter and ensure uniform interpretation throughout the region.

If you have any questions or comments please contact Doug Mundrick or Bill Gallagher of my staff at 404/881-3016.

Sincerely, .

James R. Scarborough
Chief
Residuals Management

Enclosure

NOTE: State regulatory cites have been inserted to replace corresponding federal cites.

1. **Is waste obtained in drums returned for recycling regulated under RCRA?**

   Yes, under certain circumstances Assuming the waste either exhibits one of the characteristics of a hazardous waste under 401 KAR 31:030 or is listed in 401 KAR 31:040, the controlling regulation is Section 7 of 401KAR 31:010; "Residues of Hazardous Waste in Empty Containers." This regulation states that these hazardous waste residues are not regulated if they remain in either an empty container or an inner liner removed from an empty container. An empty container that has <u>not</u> held compressed gas or acutely hazardous wastes is defined in Section 7(2)(a) of 401 KAR 31:010 as one where:

   (i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and …

   Therefore this condition must be met before a container is considered empty. This is where practically all drum recyclers become regulated. This regulation is basically stating that if an inspector can turn a drum over and pour hazardous waste out, the drum is not empty. Obviously a degree of reasonableness is required here, i.e., an inspector should not wait ten minutes for a drop to fall out, however ten seconds may be reasonable to wait for a viscous material to fall out.

   In addition to this requirement, the drum has to have less than one inch of residue remaining in it (Section 7(2)(a)2 of 401 KAR 31:010; or no more than 3% by weight of the capacity of the container, if less than or equal to 110 gallons in size (Section 7(2)(a)(3a) or no more than 0.3% by weight of the capacity of the container, if greater than 110 gallons in size (3b). Both Section 7(2)(a)1 and 2 of KAR 31:010 must be met for a drum to be considered empty.

   For acutely hazardous wastes (Section 4(5) of 401 KAR 31:040 wastes) the requirements are even more stringent with these wastes. The drum must have been either triple-rinsed using the proper solvent or cleaned by another method that achieves equivalent removal or have had a liner which prevented contact with the waste removed.

   Drum recyclers are often not as careful as they ought to be and sometimes take drums that have contained acutely hazardous waste that do not meet the above criteria. The drums are therefore hazardous waste and are subject to regulation.

2. **Many drums recyclers have incinerators that burn scale and residues off the drums interiors. Are these regulated under 401 KAR 34:240 or 401KAR 35:240?**

   Generally not. Assuming the drums meet the definition of empty, the material is not regulated therefore neither is the incinerator. If, however, hazardous wastes removed from the drums to make them empty is injected into the incinerator for disposal, the incinerator then becomes a hazardous waste incinerator and therefore regulated. It would also be regulate if the drum is hazardous (i.e., contained an acutely hazardous waste and was not cleaned properly). However, ash from these incinerators is solid waste and may exhibit a characteristic and/or may be the residue from treatment of a listed hazardous waste, therefore is a hazardous waste and regulated.

3. For tight head drums many recyclers will pour a solvent into the drum to clean it out. When this material is removed, is it regulated as a hazardous waste?

It is regulated only if:

a) the drum is not empty (see discussion of question 1);

b) it exhibits a characteristic of hazardous waste in Subpart C;

c) the material is listed in 401 KAR 31:040 and has not been excluded under 401 KAR 31:060 and 401 KAR 31:070;

d) the material is a mixture of a solid waste and a hazardous waste that is listed in 401 KAR 31:040 solely because it exhibits one or more of the 402 KAR 31:030 characteristics unless the mixture no longer exhibits a 401 KAR 31:030 characteristic; and

e) it is a mixture of solid waste and a Subtitle D hazardous waste which has not been excluded under 401 KAR 31:060 and 401 KAR 31:070 unless it is a mixture of wastewater regulated under Section 402 or 307(b) of the Clean Water Act and a waste (a,b,c,d,e) under Section 3(1)(b)4 of 401 KAR 31:010.

4. Many recyclers will also recycle drums that contained foodstuffs and other non-hazardous materials. If mixed with regulated hazardous waste is it also regulated?

See number 3a,d and e above.

5. Doesn't the drum recycler have to produce a certain quantity to be regulated?

Yes and no.

A. If a drum recycler accepts drums of hazardous waste, that are not empty according to Section 7(2)(a) of KAR 31:010, the recycler may be a TSD requiring a hazardous waste permit.

1. If the recycler accepts non-empty drums from a generator of hazardous waste, he will need a permit for storage and/or treatment. The generator must also manifest the drums to the recycler who must be a TSD.

2. If the recycler accepts non-empty drums from small quantity generators only, the facility must be one of the following:

a) Permitted under 401 KAR Chapter 38;

b) In interim status under 401 KAR Chapters 35 and 38;

c) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR Part 271;

d) Permitted, licensed or registered by a State to manage municipal of industrial solid waste.

B. How is the residue regulated?

The recycler is a generator of a waste. The recycler is a generator of hazardous waste if the residue is:

1. a hazardous waste by characteristic as described in Section 2 through 5 of 401 KAR 31:030 or a listed waste as described in Sections 2,3 or 4(6) of 401 KAR 31:040, whose quantities exceed 1000 kg/month in non empty drums;
2. a hazardous waste listed in Section 4(5) of 401 KAR 31:040, whose quantities exceed 1 kg/month non empty (drums must be triple-rinsed in order to be considered empty).

If the residue is from empty drums, the generator must determine if the waste is hazardous by characteristic.